IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1002 OF 2005

ALONG WITH

CIVIL APPLICATION NO.1183 OF 2005

Shri Devman Rupnarayan Tiwari ...Appellant

Versus

The State of Maharashtra & Ors. ...Respondents

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Mr.Prabhu i/b Mr.N.V.Bandiwadekar for Appellant.

Mr.V.B.Sakhare, A.G.P. for Respondent No.1.

Mr.R.M.Sawant for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 23, 2006.

P.C.

1. Heard Counsel for the parties.

2. I am in agreement with the conclusion reached by the Court below insofar as the finding recorded that prima facie, no document is produced to show that the Plaintiff was in possession of the

suit property. The documents which were pressed into service before the Court below and even before this Court in the form of receipts, voters list and assessment receipt have been considered by the Court below in Paragraph 6 of the impugned Judgment. The Court below has rightly found that the property is owned by F.E.Dinshaw Trust. The Appellant was to take possession of the land in question pursuant to registered Lease Deed dated 21st May 1971, which was only for three years. The lease period has expired.

3. In any case, claim of the Appellant has been now confined to four structures as referred to in the communication sent by the Appellant to the Joint Project Director, (R & R), MMRDA dated 17th December 2005. The competent Authority has considered the claim of the Appellant and accepted the same insofar as two structures ID No.33 and 12. Learned Counsel for the MMRDA states on instructions that the competent authority having accepted the claim of the Appellant insofar as those two structures are concerned, is obliged to provide alternate premises admeasuring 225 square

feet in lieu of the said structures.

4. Insofar as the other two structures are concerned, the claim of the Appellant is still under scrutiny of the competent Authority. Counsel for the MMRDA submits that if the said claim is also accepted, in that case, the Appellant will become entitled for additional two structures admeasuring 225 square feet each, so that, in all, he will get four structures as per his claim.

5. Till the proceedings before the competent Authority with regard to the remaining two structures is not concluded, no precipitative action be taken against the Appellant in respect of the said structures.

6. Insofar as the two premises which are to be offered to the Appellant in lieu of two structures ID No.33 and 12 are concerned, till such premises are made available to the Appellant, no precipitative steps be taken against the Appellant even with regard to structures ID Nos.33 and 12. That assurance is given by MMRDA which is the nodal

authority, through their Counsel, in Court, is accepted.

7. Accordingly, this Appeal is disposed of on the understanding that MMRDA will not dispossess the Appellant from ID Nos.33 and 12 till two alternative premises are offered to the Appellant in lieu of the said structures.

8. Insofar as other two structures are concerned, the Appellant will not be dispossessed even from those structures, until the competent authority finally decides the claim of the Appellant in respect of those structures. In case, the competent authority accepts the claim of the Appellant with regard to those structures, MMRDA shall offer two additional structures to the Appellant in lieu of the said two structures admeasuring 225 square feet each. Till such time or till the decision of the competent authority, MMRDA assures not to precipitate the matter. That assurance is accepted.

9. In view of the above order, Civil

Application also stands disposed of.

A.M.KHANWILKAR, J.